

SENATE BILL REPORT

ESB 5519

As Passed Senate, March 12, 2009

Title: An act relating to reform of competency evaluation and competency restoration procedures.

Brief Description: Reforming competency evaluation and restoration procedures.

Sponsors: Senators Hargrove, Stevens and Regala.

Brief History:

Committee Activity: Human Services & Corrections: 2/05/09, 2/20/09 [DPS].

Passed Senate: 3/12/09, 44-1.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5519 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Kevin Black (786-7747)

Background: A criminal defendant is incompetent to stand trial when, due to a mental disorder, the defendant lacks the capacity to understand the nature of the criminal proceedings or lacks the ability to rationally assist in his or her defense. Whenever there is reason to doubt the competency of the defendant, the criminal proceedings must be halted for a competency evaluation by a psychologist, psychiatrist, or mental health professional. Most competency evaluations are provided by the Department of Social and Health Services (DSHS) through Western State Hospital or Eastern State Hospital.

If the court determines, following evaluation, that a defendant is incompetent, a period of competency restoration treatment is permitted in order to restore the defendant to competency in all felony cases, and in all misdemeanor cases which are classified as "serious" offenses. Competency restoration treatment takes place at a state hospital. In a felony case, the defendant may be ordered to undergo 90 days of competency restoration treatment, followed, if necessary, by 90 more days of competency restoration treatment, followed by, subject to some restrictions, a final 180 days of competency restoration treatment. If the defendant remains incompetent following all permitted periods of

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competency restoration treatment, the criminal case must be dismissed and the defendant may be referred for civil commitment to a state hospital or an evaluation and treatment facility.

Competency evaluations may take place on an inpatient basis at a state hospital, or on an outpatient basis at the jail or in the community. The location of the evaluation, and the number of evaluators assigned to the evaluation, is determined by the court.

Competency proceedings are associated with long delays in criminal trials. As a result of these delays, some defendants with mental illnesses are held in custody prior to adjudication for far longer periods than other defendants accused of similar crimes. Data received from the Mental Health Division of DSHS indicates that between January 2005 and August 2008, a defendant in custody who was ordered to receive an inpatient competency evaluation waited an average of 35 days in jail before being transported to a state hospital for evaluation. A defendant in custody who was ordered to receive an outpatient evaluation waited an average of 17 days to be seen by an evaluator.

Summary of Engrossed Bill: If a defendant who is ordered to have a competency evaluation is in the custody of a jail or detention facility, the court must order for the evaluation to take place at a jail or detention facility. The competency evaluation and evaluation report must be completed within 21 days. The defendant may be admitted to a state hospital for up to 15 days if the evaluator determines this to be necessary in order to complete an accurate evaluation, in which case transportation of the defendant must be authorized within seven days. DSHS may determine the number of evaluators to assign to the evaluation. The evaluation report must include a description of the evaluation, an opinion as to competency, and a recommendation as to whether the defendant should be evaluated for civil commitment by a designated mental health professional.

Any party may request the court to hold a show cause hearing if DSHS has not complied with a time limit for a competency evaluation. If the court finds that a time limit has been exceeded without good cause, it may set a fixed time for completion of the evaluation and order DSHS to reimburse the jail for excess days at the rate of \$90 per day.

DSHS will not conduct an evaluation for insanity and diminished capacity unless the defendant has pleaded not guilty by reason of insanity, or has announced an intention to rely on a defense of diminished capacity and endorsed a witness who will testify in support of a diminished capacity defense.

A defendant charged with a felony who remains incompetent following 90 days of competency restoration treatment must not be ordered to undergo a second 90 days of competency restoration treatment if further treatment would cause the defendant to be held in custody longer than the top of the defendant's standard sentencing range, unless the court determines that further competency restoration treatment is in the public interest due to particular circumstances related to the nature or impact of the offense, or the criminal or treatment history of the defendant. A third period of competency restoration treatment must not be ordered for an offense which is not a serious offense under RCW 10.77.072.

An incompetent defendant charged with a serious misdemeanor whose case has been dismissed because the defendant is incompetent to stand trial may be detained in jail for three days before transportation to an evaluation and treatment facility for civil commitment, after which the defendant may be detained at the facility for 72 hours prior to the filing of a civil commitment petition. DSHS may agree to admit the defendant into the state hospital instead of an evaluation and treatment facility. The defendant may be screened before transportation to determine whether the defendant meets civil commitment criteria. An incompetent defendant who is not eligible to be detained at an evaluation and treatment facility following dismissal of charges by the nature of the offense may be held in custody for up to 12 hours for evaluation by a designated mental health professional.

A jail is not civilly liable for delay by DSHS in providing competency evaluations, or for releasing a defendant, within the requirements of RCW 10.77.084.

DSHS must annually publish a report describing the waiting period for competency evaluation and restoration services by county, and must adopt and publish a corrective action plan if it has not complied with time limits for competency evaluations.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill should streamline and clarify the competency evaluation and restoration process, and bring down the excessive waiting times that have been clogging up local jails around the state. It will reduce the disparity in jail time experienced by people with mental illness compared with other people accused of the same crimes. The bill will end many needless referrals to the state hospital, freeing up space for those who need to be there. The state hospitals are experiencing 7 percent growth per year in the number of competency evaluation referrals, with 52 percent growth since 2001. This legislation should delay the need to add additional forensic hospital beds. It can be implemented within existing resources. We want to reduce the time mentally ill defendants spend in jail. The bill should have more controls in it to reduce the wait times.

CON: This bill doesn't give jails enough power to enforce the 21-day time limit. Evaluators don't have enough information in the jail. Hospitals have the ability to stabilize and treat mentally ill persons who just decompensate in jail. If the defendant is in the hospital, the hospital pays for medication, not the jail.

OTHER: We are uncertain that the methods in this bill will work. We prefer adding hospital beds and adding evaluation staff to reduce wait times.

Persons Testifying: PRO: John Masterson, Washington Community Mental Health Counsel; Jim Adams, National Alliance on Mental Illness; Ronald Kessler, Superior Court

Judge; Jean Soliz-Conklin, Sentencing Guidelines Commission; David Lord, Disability Rights Washington.

CON: Steve Sultemeier, Pacific County Sheriff's Office; Craig Adams, Pierce County Sheriff Department.

OTHER: Joanna Arlow, Washington Association of Sheriffs and Police Chiefs.